

**AGREEMENT BETWEEN THE CITY OF MOUNTAIN VIEW
AND ___1___ REGARDING PRODUCTION, PURCHASE
AND INSTALLATION OF A WORK OF ART**

This contract is dated for identification this ___2___, and is made by and between the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation, whose address is P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "CITY"), and ___3___, whose address is ___4___ (hereinafter "ARTIST").

RECITALS

WHEREAS, CITY desires to place a work of art in the ___5___; and

WHEREAS, the Visual Arts Committee has recommended that the City Council select ARTIST to design, produce and install for CITY ___6___; and

WHEREAS, ARTIST was conditionally selected by the City Council of CITY after reviewing ___7___ created by the artist;

NOW, THEREFORE, in consideration of the recitals, mutual promises and agreements and subject to the terms and conditions set forth herein, the parties agree as follows:

1. Description of Art. The artwork to be designed for CITY is to be ___8___ based on renditions of a maquette presented to the City Council on ___9___ (hereinafter "the artwork"). The artwork shall not materially deviate in design or material from the original drawings and model and shall be as represented regarding the size, materials and color of the actual rendition.

2. Compensation. Total compensation to ARTIST for the design, production and installation of the artwork described herein shall not exceed ___10___. Said sum shall include all expenses incurred for design, fabrication, delivery and all other costs and shall constitute full compensation for all of ARTIST's responsibilities set forth herein.

3. Payment Schedule. CITY shall make final payment within thirty (30) days of receiving and approving a billing statement for the satisfactory delivery and installation of approved artwork.

4. Fabrication or Installation by Subcontractor. If the work will be fabricated or installed by one or more subcontractors, ARTIST shall provide CITY with the name,

address and telephone number of each subcontractor not less than ten (10) days after the Notice to Proceed is issued under this Agreement.

5. Lien Releases. ARTIST shall provide CITY with signed lien release forms from all suppliers selling or providing materials to ARTIST for inclusion in the art object not less than ten (10) days prior to ARTIST beginning any installation work.

6. Delivery of Artwork. ARTIST shall deliver the completed artwork to ___11___ or at another destination within the City of Mountain View to be selected by CITY. Delivery and installation shall be completed no later than ___12___. ARTIST shall coordinate delivery and installation with CITY.

7. Installation of Artwork. ARTIST shall install the artwork and shall be responsible for the repair of any damage to the artwork which may occur during delivery or installation. The artwork shall be installed at the site designated and prepared by CITY. CITY shall be responsible for site preparation, permits and engineering, if required. ARTIST shall provide CITY with specifications for installation within sixty (60) days after execution of this Agreement.

8. Maintenance Instructions. ARTIST shall provide CITY with written instructions for appropriate maintenance and preservation of the artwork within sixty (60) days of its installation.

9. ARTIST Warranty of Quality and Uniqueness. Upon final acceptance of the artwork by CITY, ARTIST warrants that it shall be free from defects in materials and workmanship, including inherent vice. ARTIST shall, for a period of three (3) years after acceptance by CITY, correct any such defects at ARTIST's own expense. "Inherent vice" refers to a quality within the material or materials which comprise the work which, either alone or in combination with other materials used in the artwork or reacting to the environment, results in the tendency of the work to destroy itself. Upon written notification of a defect in materials or workmanship, ARTIST shall have sixty (60) days to commence repairs and shall conclude them within a reasonable time.

ARTIST warrants that the artwork is the only edition of this work. ARTIST will not execute or authorize another to execute another artwork of the same design, dimensions or materials as the artwork purchased by CITY pursuant to this Agreement.

ARTIST shall provide a translation of any foreign languages and symbols used in the art. ARTIST warrants that the translations adequately and accurately translate the symbols and language in the art.

10. Public Safety. ARTIST agrees to permit adjustments to the artwork if necessary to eliminate hazards to the public which may become apparent following

installation of the artwork. ARTIST agrees to indemnify, defend and hold harmless CITY against and from any and all claims or suits for damages or injury arising from or caused by a defect in materials or workmanship (including, without limitation, installation and inherent vice) of the artwork.

11. Relocation. It is expressly understood and agreed that the artwork is not a site-specific work of art. CITY shall have the right, at its sole discretion, to relocate the artwork to other suitable sites designated by CITY. CITY shall make reasonable efforts to seek ARTIST's advice on siting and placement of the artwork. In the event that CITY determines to sell the artwork, CITY shall send notice to ARTIST at the last known address provided to CITY and provide ARTIST with a right of first refusal to purchase the artwork at the then-current appraised value.

12. Waiver of Art Preservation Act Rights. ARTIST expressly waives the right to sue CITY under California Civil Code Section 987 and/or the Federal Visual Artists' Rights Act of 1990, as may be amended, for any alleged alteration, destruction or mutilation which arises out of maintenance, repair, restoration, correction of a dangerous condition or relocation of the artwork.

13. Reproductions. ARTIST owns the copyright to the artwork and does not transfer the copyright to CITY. ARTIST hereby authorizes CITY to make, and to authorize the making of, photographs and other reproductions of the artwork for civic, educational, public relations, news-related, promotional and other similar purposes and/or to record the condition of the artwork.

14. Display. ARTIST hereby grants to CITY or its agents the exclusive right to display the artwork.

15. Credits. When publicly displayed, a plaque identifying ARTIST and the title of the work shall be publicly displayed in the area adjacent to the work.

16. Independent Contractor. ARTIST shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of CITY.

17. Hold Harmless. ARTIST shall hold CITY free, clear and harmless from all claims of third persons for damages arising out of the negligent acts of ARTIST and his or her agents which may arise from the performance of this Agreement.

18. Insurance. ARTIST shall provide insurance to cover the artwork until delivered, installed and accepted by CITY. Said policy(ies) shall be issued by an insurance carrier having a minimum A.M. Best rating of A:VII or better which is satisfactory to the City Attorney and shall be delivered to CITY at the time of the execution of this Agreement or as provided below. In lieu of actual delivery of such

policy(ies), a Certificate issued by the insurance carrier showing such policy to be in force for the period covered by the Agreement may be delivered to CITY. Such policy(ies) and certificate(s) shall be in a form approved by the City Attorney. The policies mentioned in this Agreement shall name CITY as an additional insured and provide for thirty (30) days notice of cancellation to CITY. Said policies shall not be canceled earlier than, nor the amount of coverage reduced earlier than, thirty (30) days after CITY receives notice from the insured of the intent of cancellation or reduction.

19. Amendment. This Agreement may be amended, modified or changed by the parties provided that said amendment, modification or change is in writing and approved by both parties.

20. Notice. All notices required herein shall be sent via First Class U.S. Mail with postage prepaid thereon to the parties as follows:

To CITY: City of Mountain View
 Attention: ____13____
 P.O. Box 7540
 Mountain View, CA 94039-7540

To ARTIST: ____14____

Notices shall be deemed sufficiently served upon deposit in the United States Mail.

21. Entire Agreement. This Agreement contains the entire agreement between CITY and ARTIST. No promise, representation, warranty or covenant not included in the Agreement has been or is relied upon by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

APPROVED AS TO CONTENT:

"CITY":
CITY OF MOUNTAIN VIEW,
a municipal corporation

Community Development Director

By: _____
City Manager

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

"ARTIST":
____15____

APPROVED AS TO FORM:

By: _____
Taxpayer I.D. No.: _____

City Attorney

BMcB/FOR-PLN
PLN-F55Δ